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(47)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 27 of 2002

Petitioners — Narayan and others

Versus

Respondents — The State of Chhattisgarh and others

Post for order on 13th April, 2007

Sd/-
Satish K. Agnihotri
Judge

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 27 of 2002

Petitioners

1. Narayan S/o Barat Ram Aghariya, aged about 65 years.
2. Raghunath S/o Late Barat Ram Aghariya, aged 63 years.
3. Baijnath S/o Late Barat Ram Aghariya, aged 61 years.
4. Devnath S/o Late Barat Ram Aghariya, aged 59 years.
5. Shivnath S/o Late Barat Ram Aghariya, aged 57 years.
6. Garhan S/o Late Barat Ram Aghariya, aged 55 years.
7. Ramcharan S/o Late Barat Ram Aghariya, aged 53 years.

All resident of Village Chhandanpur, Tahsil Saraipali, District Mahasamund.

Versus

Respondents

1. The State of Chhattisgarh, Through the Secretary, Department of Revenue, D.K.S. Building, Raipur.
2. The Commissioner, Raipur Division, Raipur.
3. Collector, Raipur, District Raipur.
4. Sub Divisional Officer, Mahasamund
5. Santosh Sounra S/o Late Dalganjan, Resident of Village Remda, Thana Basna, District Mahasamund (CG)

Single Bench: Hon'ble Mr. **Justice Satish K. Agnihotri.**

Present: Mr. Samir Singh, Advocate for the petitioners.

Ms. Deepali Pandey, Panel Lawyer for State/respondent No. 1 to 4.

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ORDER
(Passed on 13th Day of April, 2007)

1. By this petition under Article 226/227 of the Constitution of India, the petitioners impugn the order dated 3.10.2001 (Annexure P-1), 8.12.2000 (Annexure P-2), 30.3.1995 (Annexure P-3), 24.7.1991(Annexure P-4) and 3.7.1991(Annexure P-5) passed by the respondents No. 2 to 4, whereunder the appeal filed against the order dated 24.7.1991 passed by the Sub Divisional Officer, Mahasamund was dismissed as being barred by time and review petition filed thereafter was also dismissed by the Additional Commissioner, Raipur Division, Raipur.

2. The indisputable facts in nutshell are that the father of the respondent No. 5 Late Shri Dalganjan sold the agriculture land bearing Khasra No. 415 admeasuring 2.33 acres in Patwari Halka No. 40/39 to Shri Bharat Ram Aghariya father of the petitioners vide registered sale deed dated 22.4.1963 (Annexure P-7).

3. The respondent No. 4 i.e. Sub Divisional Officer, Mahasamund issued a show cause notice under the provisions of under Section 170-B of the Madhya Pradesh Land Revenue Code, 1959 (hereinafter referred to as 'the Code, 1959') to the father of the petitioners to file his reply on or before on 24.7.1991. Before issue of show cause notice, the father of the petitioners died and the petitioners did not file any reply as disputed land admeasuring 2.33 acres was distributed amongst the petitioners.

4. The respondent No. 4 vide order dated 24.7.1991 (Annexure P-4) held that the detailed enquiry under Sub section (3) is not necessary as the land owners have not filed any reply to the extent asto how the land came into their possession. The land was reverted back to the original owner Shri Dalganjan.

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5. The petitioners preferred an appeal before the Additional Collector under provision of Section 44 of the Code, 1959. The Additional Collector vide order dated 30.3.1995 (Annexure P-3), held that the petition was barred by limitation. There was no application for condonation of delay. Thus, the appeal was dismissed. In appeal, the Additional Commissioner, Raipur Division, Raipur confirmed the findings recorded by the Additional Collector in his order dated 30.3.1995 and dismissed the appeal vide order dated 8.12.2000. Against the said order dated 8.12.2000, the petitioners preferred a review petition before the Additional Commissioner. The Additional Commissioner dismissed the review petition also holding that there was no error in the order dated 8.12.2000 passed by the Additional Commissioner on the ground that the appeal against the order passed by the Sub Divisional Officer was filed after delay of 61 days, before the Additional Collector which was barred by limitation. Time taken in obtaining the certified copy was 7 days, thus, after deducting 7 days, the petition was filed after 54 days. The period of limitation prescribed under Section 47 of the Code is 45 days from the date of the order. Thus, appeal was barred by time by 9 days.

6. I have heard learned counsel for the parties, perused the pleadings and documents appended thereto.

7. It is evident that the father of the petitioners died before issue of the show cause notice under the provisions of under Section 170-B of the Code, 1959. There was no notice to the land owners as the land was distributed among the legal heirs of the original purchaser. They are the petitioners in this petition.

8. It is beneficial to quote the provisions of under Section 170-B of the Code, 1959 which is as under:-

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"[170-B. **Reversion of land of members of aboriginal tribe which was transferred by fraud.**-(1) Every person who on the date of commencement of the Chhattisgarh Land Revenue Code (Amendment) Act. 1980 (hereinafter referred to as the Amendment Act of 1980) is in possession of agricultural land which belonged to a member of a tribe which has been declared to be an aboriginal tribe under sub-section (6) of section 165 between the period commending on the 2nd October, 1959 and ending on the date of the commencement of Amendment Act, 1980 shall, within [two years] of such commencement, notify to the Sub-Divisional Officer in such form and in such manner as may be prescribed, all the information as to how he has come in possession of such land.

(2) if any person fails to notify the information as required by sub-section (1) within the period specified therein it shall be presumed that such person has been in possession of the agricultural land without any lawful authority and the agricultural land shall, on the expiration of the period aforesaid revert to the person to whom it originally belonged and if that person be dead, to his legal heirs.

[1][2-A) If a Gram Sabha in the Scheduled area referred to in clause (1) of Article 244 of the Constitution finds that any person, other than a member of an aboriginal tribe, is in possession of any land of a Bhumiswami belonging to an aboriginal tribe, without any lawful authority, it shall restore the possession of such land to that persons to whom it originally belonged and if that person is dead to his legal heirs:

Provided that if the Gram Sabha fails to restore the possession of such land, it shall refer the matter to the Sub-Divisional Officer, who shall restore the possession of such land within three months from the date of receipt of the reference.]

(3) On receipt of the information under sub-section (1), the Sub-Divisional Officer shall make such enquiry as may be deemed necessary about all such transactions of transfer and if he finds that the member of aboriginal tribe has been defrauded of his legitimate right he shall declare the transaction null and void and

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pass an order revesting the agricultural land in the transferer and, if he is dead, in his legal heirs.]

[2][(3) On receipt of the information under sub-section (1) the Sub-Divisional Officer shall make such enquiry as may necessary about all such transactions of transfer and if he finds that the member of aboriginal tribe has been defrauded of his legitimate right he shall declare the transaction null and void and-

(a) Where no building or structure has been erected on the agricultural land prior to such finds pass an order revesting the agricultural land in the transferer and if he be dead, in his legal heirs,

(b) Where any building or structure has been erected on the agricultural land prior to such finding, he shall fix the price of such land in accordance with the principles laid down for fixation of price of land in the Land Acquisition Act, 1894 (No. 1 of 1894) and order the person referred to in sub-section (1) to pay to the transferer the difference, if any, between the price so fixed and the price actually paid to the transferer:

Provided that where the building or structure has been erected after the 1st day of January, 1984 the provisions of clause (b) above shall not apply:

Provided further that fixation of price under clause (b) shall be with reference to the price on the date of registration of the case before the Sub-Divisonal Officer.]"

9. It is clear from unambiguous provisions under Section 170-B of the Code, 1959 that there is no contemplation of the notice but the person who is in possession of agricultural land which belonged to a member of a tribe which has been declared to be an aboriginal tribe between the period commencing from 2nd October, 1959 and ending on the date of the commencement of Amendment Act, 1980 shall, within [two years] of such commencement, notify to the Sub-Divisional Officer in such form and in such manner as may be prescribed, all the information as to how he has

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come in possession of such land. If any person fails to notify the information as required by sub-section (1) within the period specified therein it shall be presumed that such person has been in possession of the agricultural land without any lawful authority and the agricultural land shall, on the expiration of the period aforesaid revert to the person to whom it originally belonged and if that person is dead, to his legal heirs.

10. In the facts of the present case, it was for the petitioners as they were in possession of disputed lands to notify to the Sub-Divisional Officer about the nature of the land and how they are in possession of agricultural land of a Bhumiswami belonging to an aboriginal tribe, without any lawful authority. In the event, the subsequent land holders fail to notify the information to the Sub-Divisional Officer within the specified period. It shall be presumed that such person has been in possession of the agricultural land without any lawful authority and the agricultural land shall, on the expiration of the period aforesaid revert to the person to whom it originally belonged and if that person be dead, to his legal heirs.

11. In absence of information, no enquiry is prescribed under the provisions of Sub section 3 of Section 170-B of the Code, 1959. Thus, the Sub-Divisional Officer may proceed to declare the land as belonging to the respondent No. 5, a tribe which has been declared as an aboriginal tribe under Sub section (6) of Section 165. The petitioners have not explained delay in filing the appeal as there was no application for condonation of delay.

12. A Division Bench of the High Court of Madhya Pradesh, while considering the scope of Sub-section (2) of section 170-B of the Madhya Pradesh

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Land Revenue Code, which has been adapted by the State of Chhattisgarh, held in the case of ***Atmaram and others v. State of M.P. and others*** (1995 RN 124) as under:-

"5. Sub-section (3) reads as follows:

> "(3). On receipt of the information under sub-section (1), the Sub-Divisional Officer shall make such enquiry as may be deemed necessary about all such transactions of transfer and if he finds that the member of aboriginal tribe has been defrauded of his legitimate right, he shall declare the transaction null and void..."
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> Though the sub-section commences with the words "on receipt of the information under sub-section (1)," it cannot be that no show cause notice and no enquiry are necessary in matters covered by sub-section (2). This has been clarified by this Court in *Dhirendra Nath Sharma v. State of M.P. and another,* (1986 RN 106 = 1985 MPLJ 786). In that case, constitutional validity of section 170-D was challenged and the challenge was repelled. In doing so, the Court observed in para 14 of the reported judgment as follows:
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> "It is obvious that in all cases including those in which a presumption arises under sub-section (2), a final order contemplated by sub-section (3) has to be made and it is only the making of such an order which results in the declaration that the transaction is null and void and the agricultural land revests in the transferor or his legal heirs. Unless such an order is made even in cases in which the presumption under sub-section (2) arises, there would be no order for implementation to bring about the desired result."

> "9. As explained in *Dhirendra Nath Sharma's* case, even in a case governed by sub-section (2) of section 170-B of the Code, there must be show cause notice and enquiry. In reply to show cause notice, it is open to the vendee in possession to aver that his possession is by lawful authority. It must be open to him to adduce evidence in support of his contention

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that his possession is by lawful authority. If the S.D.O. is satisfied on the materials before him either produced by the vendee or received from other sources that the vendee's possession is based on lawful authority, the presumption is rebutted. That is the end of the operation of sub-section (2). It is important to know that the presumption has nothing to do with the aspect whether the document is obtained by fraud or other unfair means or whether the document is substantially unfair and constitutes fraudulent transaction affecting legitimate right of the tribals. The presumption is confined only to one aspect in a narrow compass namely, whether the possession is without lawful authority."

13. I am respectfully in full agreement with the view taken by the High Court of Madhya Pradesh.

14. It is well settled principles of law that the delay in filing appeal/petition cannot be condoned in absence of an application for condonation of delay. The petitioners have not complied with the provisions of Section 170-B (1) of the Code, as it is mandatory for all the persons who are in possession of agricultural land which belonged to a member of a tribe which has been declared to be an aboriginal tribe to notify to the Sub-Divisional Officer. However, delay of 9 days is not substantial delay which deprives the petitioners from explaining the possession of the agricultural land which belonged to a tribe. Thus, the order of the Sub-Divisional Officer is vitiated as no enquiry was found by him as necessary without receipt of any information from the petitioners who were in actual possession of the land belonging to aboriginal tribe.

15. It is, therefore, necessary to remit back the matter to the Sub-Divisional Officer, Mahasamund to hold proper enquiry after issuing show cause

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notice to the petitioners who are in actual possession of the agricultural lands.

16. As a result and for the reasons above mentioned, impugned orders dated 3.10.2001 (Annexure P-1), 8.12.2000 (Annexure P-2), 30.3.1995 (Annexure P-3), 24.7.1991(Annexure P-4) and 3.7.1991(Annexure P-5) passed by the respondents No. 2 to 4 are quashed and set-aside. Thus, the petition is allowed and the matter is remitted back to the Sub-Divisional Officer for holding enquiry under the provisions of Section 170-B of the Code, 1959.

Sd/-
Satish K. Agnihotri
Judge

Subhash